

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Expanding the Economic and Innovation |) | Docket No. 12-268 |
| Opportunities of Spectrum Through Incentive |) | |
| Auctions |) | |

COMMENTS OF KRBK, LLC

KRBK, LLC, the licensee of KRBK(TV), Osage Beach, Missouri, Facility ID No. 166319 (“KRBK”), hereby submits these comments in response to the Commission’s October 2, 2012 *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned docket. KRBK wishes to focus on the discrete issue of interference protection for authorized television facilities. For the reasons set forth below, KRBK requests that the Commission clarify in any decision arising from the *NPRM* that KRBK’s Distributed Transmission System (“DTS”) facility, which was operating pursuant to Special Temporary Authority on the date of enactment of the Spectrum Act,¹ is full protected in terms of its coverage area and population served.

Background

KRBK is a full power digital television station owned and operated by KRBK, LLC, a single-station owner. KRBK is licensed to Osage Beach, Missouri and lies in the Springfield, MO designated market area (market #74). From August, 2009 until October, 2011, KRBK broadcasted from its then-licensed facilities, consisting of a single transmitter located in Eldridge, Missouri.

Effective September 1, 2011, KRBK became affiliated with the Fox Broadcasting Company, making it the exclusive provider of Fox programming in the Springfield market. Looking to expand its signal coverage to more densely populated areas while maintaining its coverage of Osage Beach, KRBK filed an application for DTS facilities on August 25, 2011, which was granted by the Commission on September 2, 2011. KRBK’s planned DTS facilities would consist of five transmitters, centered around a reference point of Polk, MO (please see signal contours depicted in **Exhibit A**). Each of the five transmitters would be geo-synchronized to prevent interference with one another. This network of transmitters would allow KRBK to

¹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law No. 112-96, § 6403(b)(2), 126 Stat.226 (2012) (the “Spectrum Act”).

cover as far south as the city of Springfield, while leaving in place its existing coverage of Osage Beach, which lies at the very northern border of the DMA.

On October 6, 2011, the Commission granted KRBK Special Temporary Authority (“STA”) to begin operation of its DTS facility.² The STA permitted KRBK to sequentially sign on up to five of the DTS transmitter sites, starting with the original transmitter in Eldridge. KRBK was able to commence operations with four of the five sites prior to February 22, 2012, with the fifth and final site commencing operations on March 12, 2012. The fifth site, which required a tower to be built from the ground up, was anticipated to be completed prior to February, but encountered unanticipated delays primarily due to winter weather. When all five sites were up and synchronized, KRBK filed its application for license with the Commission.³ The cost of the project to KRBK, LLC was in excess of \$1.7 million.

The Commission granted KRBK its DTS license on June 27, 2012. The license authorized operations with identical facilities that were granted in the STA, under the same parameters. Because the authorized STA facilities and the authorized licensed facilities were identical, obtaining the license was a ministerial matter.

KRBK’s DTS Coverage

KRBK’s DTS facilities have been vital to the station’s ability to service the Springfield market. With KRBK’s previous facilities, the station reached approximately 123,000 viewers with its over the air signal, while under the new facilities, the station reaches approximately 595,000 viewers. DTS allows KRBK to have a broadcast signal that is close to parity with the other major network affiliated stations in the market. In addition to covering its Osage Beach community of license and most of the Springfield metropolitan area, DTS has enabled KRBK to cover the more sparsely populated northwestern portion of the DMA, an area that did not traditionally have access to quality over the air television signals. Through KRBK, these households now have access to critically important public services, including tornado warnings and other severe weather updates. (Springfield is located approximately 70 miles due east of Joplin, which experienced a catastrophic tornado in May 2011).

KRBK has invested in local production capabilities that would not have been practical under the previously licensed facilities. Among these are a weather department, a production staff focused on creating local, community oriented content, and the groundwork for a newscast that KRBK intends to launch in 2013. In addition, many new households can now watch Fox programming, including NFL, NASCAR, MLB, American Idol and many other popular shows, free, over the air.

² File No. BLSTA-20110927AHQ (granted Oct. 6, 2011).

³ File No. BLCDT- 20120412ACM (granted June 27, 2012).

With DTS, the public interest was served by expeditiously bringing an additional free over the air digital television station to hundreds of thousands of households, which have come to rely on KRBK's programming.

Spectrum Act

The *NPRM* generally proposes to protect only those television facilities that were licensed as of February 22, 2012, or for which a license application to cover a construction permit was pending as of that date.⁴ The *NPRM* is silent with respect to protection of STA facilities that were authorized as of the date of the Spectrum Act. However, the *NPRM* specifically leaves open the possibility that other types of facilities should be protected:

Although section 6403(b)(2) mandates preservation only of certain licensed facilities, we do not interpret it to prohibit the Commission from granting protection to additional facilities where appropriate.⁵

KRBK submits that its situation is the very kind of circumstance for which the Commission intended to protect through this flexible interpretation. The station's STA facilities, which were authorized well before the Spectrum Act was enacted, should be fully protected. Strict adherence to the statutory language would result in an unintended, irrational outcome in the case of KRBK. During the construction of its DTS facilities, KRBK had no way of knowing the time constraints it was under to build out its facilities and apply for a license prior to February 22, 2012. Had KRBK known of the impending deadline, the company likely would not have invested over \$1.7 million and countless hours of labor toward completing a facility that might not be afforded protection, or alternatively, KRBK would have proceeded with even greater haste in completing the project prior to February 22, 2012.

Finally, KRBK believes that these factual circumstances are unique – we are unaware of any other similarly situated station in the country that had been issued an STA, prior to February 22, 2012, authorizing facilities that were identical to those for which it was ultimately licensed after the enactment of the Spectrum Act..

Conclusion

Given the unique circumstances of this situation, KRBK, LLC submits that including KRBK's DTS facilities in the list of stations receiving full interference protection will comport with the intent of Congress and the Commission's auction goals, and will serve the public interest by ensuring that viewers across the KRBK coverage area will continue to receive free, vital over the air television service from KRBK.

⁴ *NPRM* ¶ 113. The *NPRM* suggests that "licensees with construction permits . . . are not covered by Section 6403(b)(2)." *Id.* n.151.

⁵ *NPRM* § 114 & n. 169 (citing Section 6403(i)(1) of the Spectrum Act).

Respectfully submitted,

/s/

Robert Koplar
General Counsel

January 25, 2013

Submitted via ECFS

KRBK DTS Contours

